



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 7, 1993

Honorable Bill Turner
Brazos County District Attorney
Brazos County Courthouse
300 East 26th Street, Suite 310
Bryan, Texas 77803

Letter Opinion No. 93-78

Re: Whether a county clerk may collect a records management and preservation fee on a document filed in an adverse probate action (ID# 20909)

Dear Mr. Turner:

You have asked us to consider whether the clerk of a county court may charge a records management and preservation fee upon the filing of a document in an adverse action on a probate matter. We conclude that the clerk may impose and charge a records management and preservation fee on such a document only if the document initiates the adverse probate action.

During its 1993 session, the legislature enacted Senate Bill 1058, which related to fees that state and local government agencies impose and collect. *See* Acts 1993, 73d Leg., ch. 675. Section 1 of that act amended section 118.052 of the Local Government Code to provide in pertinent part as follows:

Each clerk of a county court shall collect the following fees for services rendered to any person:

(1) CIVIL COURT ACTIONS

....

(2) PROBATE COURT ACTIONS

....

(3) OTHER FEES

....

(F) Records Management and Preservation

Fee \$5.00

Additionally, section 3 of Senate Bill 1058 added section 118.0645 to chapter 118, subchapter C of the Local Government Code. Section 118.0645 provides as follows:

**RECORDS MANAGEMENT AND PRESERVATION FEE--
PROBATE CASES. (a) The fee for "Records Management and**

Preservation" under Section 118.052 is for the records management and preservation services performed by the county as required by Chapter 203.

(b) The fee shall be assessed as cost and must be paid at the time of filing any probate case or adverse probate action.

(c) The fee shall be placed in a special fund entitled records management and preservation fund.

(d) The fee shall be used only for records management and preservation purposes in the county as required by Chapter 203. No expenditure may be made from this fund without prior approval of the commissioners court.

Finally, section 4 of Senate Bill 1058 amended section 203.003 of the Local Government Code to add to the duties required of a county commissioners court the duty to "establish a records management and preservation fund for the records management and preservation fees authorized under Section[] 118.052, . . . and 118.0645, . . . , and approve in advance any expenditures from the fund, which may be spent only for records management preservation or automation purposes in the county."¹ These provisions became effective September 1, 1993. See Acts 1993, 73d Leg., ch. 675, § 10(b).

Pursuant to these recent amendments to the Local Government Code, the clerk of a county court must collect a \$5.00 records management and preservation fee² *"at the time of filing any . . . adverse probate action."* Local Gov't Code § 118.0645(b). The clerk is not authorized, however, to collect a records management and preservation fee at any other time during the course of an adverse probate action. We thus conclude that the clerk of a county court must charge the \$5.00 records management and preservation fee only upon the filing of the document initiating the adverse probate action. You have specifically asked about the filing of a document entitled "Answers to Interrogatories." As such a document is filed only after an adverse probate action is filed, the clerk is

¹Notably, section 203.003 of the Local Government Code does not authorize a county commissioners court to set the amount of the records management and preservation fee that a clerk may collect pursuant to section 118.052; rather, section 118.052 sets a mandatory fee. Section 203.003 only requires the county commissioners court to establish a fund into which the clerk must place revenues from the records management and preservation fee collected under, among other statutory provisions, section 118.052 of the Local Government Code, and to approve in advance any expenditures made for records management and preservation.

²Section 118.052(3)(F) of the Local Government Code requires a clerk of a county court to collect a records management and preservation fee of \$5.00. On the other hand, section 118.011(b)(2) of the Local Government Code authorizes, but does not require, a county clerk to set and collect a records management and preservation fee of not more than \$5.00. We believe that the records management and preservation fee provided in section 118.052 applies only to documents listed in that section, while the records management fee provided in section 118.011 applies only to documents listed in section 118.011.

unauthorized to charge a records management and preservation fee to the filer of that document.

You raise another issue as well: whether the clerk of a county court may charge as the records management and preservation fee a total of \$5.00 or \$5.00 *per page*. Most of the fees specified in section 118.052 appear to cover the entire document or entire service, *e.g.*, a \$30.00 fee for the filing of an action other than an original action; a \$10.00 fee for an affidavit of heirship, a \$2.00 fee for a letter of guardianship. Where the legislature wanted the fee to be computed on a per page basis, it has clearly so stipulated. *See, e.g.*, Local Gov't Code § 118.052(2)(B)(i) (requiring clerk to charge \$3.00 for filing and recording first page of document in pending probate action and \$2.00 for "each additional page"), (3)(B) (requiring clerk to charge \$1.00 per page of certified paper). We believe, therefore, that the total records management and preservation fee the clerk of a county court must charge upon the filing of an adverse probate action is \$5.00.

S U M M A R Y

A clerk of a county court must impose and charge a records management and preservation fee of \$5.00 upon the filing of a document that initiates an adverse probate action. The clerk may not impose a records management and preservation fee on documents filed during the pendency of the adverse probate action.

The total records management and preservation that fee that the clerk of a county court must charge upon the filing of an adverse probate action is \$5.00; the clerk may not assess a fee of \$5.00 per page.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee